

## Message Text

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ACTION MC-02

INFO OCT-01 EUR-12 NEA-10 ISO-00 DODE-00 EB-07 NRC-05

NSAE-00 TRSE-00 ERDA-05 CIAE-00 COME-00 OMB-01 AID-05

SY-05 ACDA-05 PM-04 H-02 INR-07 L-03 NSC-05 PA-01

PRS-01 SP-02 SS-15 USIA-06 SAJ-01 /105 W

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R 121829Z FEB 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC 6447

INFO USMISSION NATO BRUSSELS

AMEMBASSY ATHENS

AMEMBASSY ANKARA

AMEMBASSY CAIRO

AMEMBASSY LISBON

AMEMBASSY LONDON

AMEMBASSY PARIS

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E. O. 11652" N/A

TAGS: MILI, GW, MASS

SUBJECT: LAWS GOVERNING ARMS EXPORTS

REFS: (A) STATE 28053

(B) BONN 00818 (NOTAL)

BEGIN SUMMARY: TWO 1961 LAWS GOVERN FRG ARMS EXPORTS.  
IN 1971 THE FEDERAL CABINET ISSUED POLITICAL GUIDELINES  
TO INTERPRET THE LAWS, THEREBY ESTABLISHING THE POLICY  
THAT GERMAN ARMS WOULD NOT BE EXPORTED TO "AREAS OF  
TENSION". IN GENERAL, THE FRG HAS STRICTLY IMPLEMENTED  
THE LAWS AND GUIDELINES. THE WEAKEST LINK IN THE FRG  
ARMS EXPORTS SYSTEM CONCERNS THIRD COUNTRY TRANSFERS  
WHERE NO DIRECT GOVERNMENT-TO-GOVERNMENT UNDERSTANDING  
IS OBTAINED. END SUMMARY

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1. IN ACCORDANCE WITH REF A, SET FORTH BELOW ARE THE LAWS AND ADMINISTRATIVE PROCEDURES GOVERNING ARMS EXPORTS FROM THE FRG.

2. ARTICLE 26 OF THE BASIC LAW IS THE BASIS OF THE FRG POSITION. IT READS AS FOLLOWS:

"(1) ACTS TENDING TO AND UNDERTAKEN WITH THE INTENT TO DISTURB THE PEACEFUL RELATIONS BETWEEN NATIONS, ESPECIALLY TO PREPARE FOR AGGRESSIVE WAR, SHALL BE UNCONSTITUTIONAL. THEY SHALL BE MADE A PUNISHABLE OFFENCE.

(2) WEAPONS DESIGNED FOR WARFARE MAY NOT BE MANUFACTURED, TRANSPORTED OR MARKETING EXCEPT WITH THE PERMISSION OF THE FEDERAL GOVERNMENT. DETAILS SHALL BE REGULATED BY A FEDERAL LAW.

3. THE TWO FEDERAL LAWS GOVERNING ARMS EXPORTS PROMULGATED IN ACCORDANCE WITH ARTICLE 26 ARE THE MILITARY ARMS CONTROL ACT DATED APRIL 20, 1961 AND THE FOREIGN ECONOMIC RELATIONS ACT DATED APRIL 28, 1961. THE FORMER ACT PROVIDES THAT AUTHORIZATION FOR ARMS EXPORTS CAN BE DENIED IF IT IS BELIEVED THAT THE ISSUANCE OF SUCH AUTHORIZATION WOULD RUN COUNTER TO THE INTEREST OF THE FEDERAL REPUBLIC IN MAINTAINING GOOD RELATIONS TO OTHER COUNTRIES. THE EXPORT AUTHORIZATION IS TO BE DENIED IF THE DANGER EXISTS THAT THE ARMS IN QUESTION WILL BE USED IN A MANNER WHICH DISTURBS THE PEACE, IN PARTICULAR A WAR OF AGGRESSION. AUTHORIZATION TO EXPORT ARMS IS ALSO TO BE DENIED IF IT IS BELIEVED THAT THE GRANTING OF THE AUTHORIZATION WOULD BE INJURIOUS TO THE INTERNATIONAL OBLIGATIONS OF THE FEDERAL REPUBLIC OR WOULD ENDANGER THEIR FULFILLMENT.

4. ARTICLE 7 OF THE FOREIGN ECONOMIC RELATIONS ACT ADDRESSES THE PROTECTION OF THE FRG'S SECURITY AND FOREIGN INTERESTS. AS IN THE MILITARY ARMS CONTROL ACT, LIMITED OFFICIAL USE

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THE FEDERAL GOVERNMENT IS AUTHORIZED TO LIMIT THE TRAFFIC IN ARMS AND MUNITIONS IN ORDER TO GUARANTEE THE SECURITY OF THE FRG, TO PREVENT A DISTURBANCE OF THE PEACEFUL COOPERATION OF PEOPLES, OR TO PREVENT A "CONSIDERABLE" DISTURBANCE OF THE FRG'S FOREIGN RELATIONS.

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5. ON JUNE 16, 1971, THE FEDERAL CABINET PROVIDED POLITICAL GUIDELINES TO INTERPRET THE 1961 ACTS. THESE GUIDELINES ESTABLISHED THE POLICY THAT THE FRG WILL NOT EXPORT ARMS INTO "AREAS OF TENSION". SUCH "AREAS OF TENSION" HAVE NOT BEEN DEFINED ON PAPER, BUT ARE SUBJECT TO DETERMINATION ON A CASE-BY-CASE BASIS WHEN A GERMAN ARMS MANUFACTURER SUBMITS AN APPLICATION FOR AUTHORIZATION TO EXPORT ARMS. THE FRG'S GENERAL PRACTICE HAS BEEN TO PERMIT THE EXPORT OF WEAPONS TO NATO COUNTRIES AND TO DENY PERMISSION FOR EXPORTS TO NON-NATO COUNTRIES. HOWEVER, EXCEPTIONS HAVE BEEN MADE TO THIS POLICY (REF B).

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6. TO PREVENT THE TRANSFER OF ARMS TO THIRD COUNTRIES, THE FRG REQUIRES AN IMPORTING COUNTRY TO PROVIDE AN END-USE CERTIFICATION. THIS IS NOT DONE ON A DIRECT GOVERNMENT-TO-GOVERNMENT BASIS. INSTEAD IT IS THE RESPONSIBILITY OF THE GERMAN EXPORTER TO OBTAIN THE END-USE CERTIFICATION WHICH IS PREPARED IN A "TO WHOM IT MAY CONCERN" FORMAT.

THE END-USE CERTIFICATION THEN FORMS A PART OF THE APPLICATION SUBMITTED TO THE FRG BY THE FIRM DESIRING TO EXPORT THE ARMS. ALTHOUGH AS A GENERAL RULE END-USE CERTIFICATIONS ARE NOT REQUIRED OF NATO ALLIES, THE FRG DOES REQUIRE THEM FROM GREECE, TURKEY AND PORTUGAL.

7. EMBASSY EVALUATION OF EFFECTIVENESS OF ADMINISTRATION: THE FRG HAS BEEN VERY STRICT IN THE IMPLEMENTATION OF THE 1961 ACTS AS INTERPRETED BY THE 1971 CABINET GUIDELINES. THE STRICT INTERPRETATION OF THE LAWS GOVERNING ARMS EXPORTS HAS LED TO DOMESTIC POLITICAL CONFLICTS WHICH HAVE BEEN DESCRIBED IN REF B. POLITICALLY SIGNIFICANT DECISIONS CONCERNING THE EXPORT OF GERMAN ARMS ARE TAKEN BY THE FEDERAL SECURITY COUNCIL.

8. THE GERMANS HAVE NOT TRIED TO FOLLOW THE TRANSFER OF THEIR ARMS TO THIRD COUNTRIES ONCE THE ARMS REACH THE IMPORTING COUNTRY. RELIANCE AGAINST FURTHER TRANSFER IS PLACED SOLELY ON THE END-USE CERTIFICATIONS. THE GERMANS RECOGNIZE THAT ABUSES OCCUR FROM TIME TO TIME, WITH GERMAN ARMS TURNING UP IN COUNTRIES WHERE THEY WOULD NOT NORMALLY BE SENT HAD A FORMAL APPLICATION BEEN SUBMITTED. SUCH PROBLEMS WERE MOST PREVALENT DURING THE 1960'S.

9. ANOTHER PROBLEM AREA WITH WHICH THE FRG HAS YET TO COME TO GRIPS CONCERNS CO-PRODUCTION ARRANGEMENTS WHERE THE OTHER PARTNER WISHES TO EXPORT A GIVEN ITEM TO A THIRD COUNTRY. THE EXAMPLE MOST FREQUENTLY DISCUSSED IN THE FRG IS THE ALLEGED DESIRE OF THE FRENCH TO SELL ALPHA JETS TO THE EGYPTIANS. A FOREIGN OFFICE SOURCE

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SAID NO ARRANGEMENTS HAVE YET BEEN WORKED OUT WITH THE

FRENCH FOR DEALING WITH THIS PROBLEM.  
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## Message Attributes

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**Copy:** SINGLE  
**Draft Date:** 12 FEB 1976  
**Decaption Date:** 01 JAN 1960  
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